

1 CHRISTOPHER J. NEARY
2 Attorney at Law, #69220
3 110 South Main Street, Suite C
Willits, CA 95490

4 (707) 459-5551

5 Attorney for defendants, U.S. ALCHEMY CORPORATION,
6 dba UKIAH AUTO DISMANTLERS and WAYNE HUNT

7
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 PINOLEVILLE POMO NATION,) Case No. C 07-02648 SI
12 PINOLEVILLE POMO NATION)
13 ENVIRONMENTAL ASSOCIATION and)
14 LEONA WILLIAMS,) DEFENDANT U.S. ALCHEMY
15 Plaintiffs,) CORPORATION'S ANSWER TO
16 v.) COMPLAINT FOR INJUNCTIVE RELIEF,
17) CIVIL PENALTIES, RESTITUTION,
18) REMEDIATION AND DAMAGES
19)
20)
21)
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Comes now, U.S. ALCHEMY CORPORATION, dba UKIAH AUTO DISMANTLERS ("UAD") answers the Complaint for injunctive relief, civil penalties, restitution, remediation and damages filed by plaintiffs PINOLEVILLE POMO NATION, PINOLEVILLE POMO NATION ENVIRONMENTAL ASSOCIATION, and LEONA WILLIAMS as follows:

1. In response to the allegations UAD admits that Plaintiffs have brought this

1 action under the citizen-suit provisions of the Clean Water Act and RCRA. UAD denies
2 each and every other allegation of paragraph 1.

3 2. UAD denies each and every allegation contained in Paragraph 2.

4 3. UAD denies each and every allegation contained in Paragraph 3.

5 4. UAD admits that Plaintiffs seek the relief requested.

6 5. UAD admits that Plaintiffs seek the relief cited, except as expressly admitted
7 herein, UAD denies each and every other allegation contained in Paragraph 5.

8 6. UAD has insufficient knowledge or information to form a belief as to the
9 truth of the allegations in Paragraph 6, and on such basis denies each and every allegation
10 contained therein.

11 7. UAD has insufficient knowledge or information to form a belief as to the
12 truth of the allegations in Paragraph 7, and on such basis denies each and every allegation
13 contained therein.

14 8. UAD has insufficient knowledge or information to form a belief as to the
15 truth of the allegations in Paragraph 8, and on such basis denies each and every allegation
16 contained therein.

17 9. UAD has insufficient knowledge or information to form a belief as to the
18 truth of the allegations in Paragraph 9, and on such basis denies each and every allegation
19 contained therein.

20 10. In response to Paragraph 10, UAD admits that it conducts business under the
21 firm name and style of Ukiah Auto Dismantlers, and that its address is 500-D Pinoleville
22 Drive, Ukiah, California 95482. Except as expressly admitted herein, UAD denies each and
23 every other allegation of Paragraph 10.

24 11. UAD has insufficient knowledge or information to form a belief as to the
25 truth of the allegations in Paragraph 11, and on such basis denies each and every allegation
26 contained therein.

1 12. In response to Paragraph 13, UAD admits that the text of the provisions can
2 be identified from the provisions, excepts as expressly admitted herein, UAD denies each
3 and every other allegation of paragraph 13.

4 13. In response to Paragraph 14, UAD admits that the text of the provisions can
5 be identified from the provisions, excepts as expressly admitted herein, UAD denies each
6 and every other allegation of paragraph 14.

7 14. In response to Paragraph 15, UAD denies each and every allegation contained
8 therein.

9 15. In response to Paragraph 16, UAD admits the allegations contained therein.

10 16. In response to Paragraph 17, UAD admits that the text of the documents
11 referred to can be identified from the referenced documents. Except as expressly admitted
12 herein, UAD denies each and every other allegation contained in Paragraph 17.

13 17. In response to Paragraph 18, UAD denies each and every allegation contained
14 therein.

15 18. In response to Paragraph 19, UAD admits the allegations contained therein.

16 19. In response to Paragraph 20, UAD admits that he has filed a notice with the
17 RWQB to be covered by the General Permit. Except as expressly admitted herein, UAD
18 denies each and every other allegation contained in Paragraph 20.

19 20. In response to the statements in Paragraph 21, UAD acknowledges that the
20 statements are generally correct as a matter of general application. Except as expressly
21 admitted herein, UAD denies each and every other allegation contained in Paragraph 21.

22 21. In response to the statements in Paragraph 22, UAD acknowledges that the
23 statements are generally correct as a matter of general application. Except as expressly
24 admitted herein, UAD denies each and every other allegation contained in Paragraph 22.

25 22. In response to the statements in Paragraph 24, UAD acknowledges that the
26 statements are generally correct as a matter of general application. Except as expressly
27 admitted herein, UAD denies each and every other allegation contained in Paragraph 24.

1 admitted herein, UAD denies each and every other allegation contained in Paragraph 24.
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3 23. In response to Paragraph 25, UAD denies each and every allegation contained
4 therein.
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6 24. In response to Paragraph 26, UAD denies each and every allegation contained
7 therein.
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9 25. In response to Paragraph 27, UAD denies that plaintiffs are entitled to impose
10 civil penalties or that plaintiffs have established the basis for equitable relief, and
11 furthermore denies each and every allegation contained therein.
12

13 26. In response to Paragraph 28, UAD denies each and every allegation contained
14 therein.
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16 27. In response to Paragraph 29, UAD denies each and every allegation contained
17 therein.
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19 28. In response to Paragraph 30, UAD denies each and every allegation contained
20 therein.
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22 29. In response to Paragraph 31, UAD denies each and every allegation contained
23 therein.
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25 30. In response to Paragraph 32, UAD denies that plaintiffs are entitled to impose
26 civil penalties or that plaintiffs have established the basis for equitable relief, and
27 furthermore denies each and every allegation contained therein.
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31. In response to Paragraph 34, UAD admits that the text of the document
32 referred to can be identified from the document. Except as expressly admitted herein,
33 UAD denies each and every other allegation contained in Paragraph 34.
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35. In response to Paragraph 35, UAD admits that the North Coast Regional
36 Water Quality Control Board and the Mendocino County Department of Health, along
37 with other agencies, regulate the activities of the general public, including UAD. Except
38 as expressly admitted herein, UAD denies each and every other allegation contained in
39

1 paragraph 35.

2 33. In response to Paragraph 36, UAD admits the allegations contained therein.

3 34. In response to Paragraph 37, UAD denies each and every allegation contained
4 therein.

5 35. In response to Paragraph 38, UAD denies each and every allegation contained
6 therein.

7 36. In response to Paragraph 40, UAD admits that the text of the document
8 referred to can be identified from the document, except as expressly admitted herein, UAD
9 denies each and every other allegation contained therein.

10 37. In response to Paragraph 41, UAD denies each and every allegation contained
11 therein.

12 38. In response to Paragraph 42, UAD denies each and every allegation contained
13 therein.

14 39. In response to Paragraph 43, UAD denies each and every allegation contained
15 therein.

16 40. In response to Paragraph 44, UAD has insufficient knowledge or information
17 to form a belief as to the accuracy of the allegations contained therein, and on such basis
18 denies each and every allegation contained therein.

19 41. In response to Paragraph 45, UAD has insufficient knowledge or information
20 to form a belief as to the accuracy of the allegations contained therein, and on such basis
21 denies each and every allegation contained therein.

22 42. In response to Paragraph 46, UAD has insufficient knowledge or information
23 to form a belief as to the accuracy of the allegations contained therein, and on such basis
24 denies each and every allegation contained therein.

25 43. In response to Paragraph 47, UAD denies each and every allegation contained
26 therein.

1 44. In response to Paragraph 49, UAD denies each and every allegation contained
2 therein.

3 45. In response to Paragraph 50, UAD denies each and every allegation contained
4 therein.

5 46. In response to Paragraph 51, UAD denies each and every allegation contained
6 therein.

7 47. In response to Paragraph 52, UAD denies each and every allegation contained
8 therein.

9 48. In response to Paragraph 53, UAD denies each and every allegation contained
10 therein.

11 49. In response to Paragraph 55, UAD denies each and every allegation contained
12 therein.

13 50. In response to Paragraph 56, UAD admits that the text of the document
14 referred to can be identified from the document, except as expressly admitted herein, UAD
15 denies each and every other allegation contained in Paragraph 56.

16 51. In response to Paragraph 57, UAD admits that the text of the document
17 referred to can be identified from the document, except as expressly admitted herein, UAD
18 denies each and every other allegation contained in Paragraph 57.

19 52. In response to Paragraph 58, UAD denies each and every allegation contained
20 therein.

21 53. In response to Paragraph 59, UAD denies each and every allegation contained
22 therein.

23 54. In response to Paragraph 60, UAD denies each and every allegation contained
24 therein.

25 55. In response to Paragraph 62, UAD denies each and every allegation contained
26 therein.

1 56. In response to Paragraph 63, UAD denies each and every allegation contained
2 therein.

3 57. In response to Paragraph 65, UAD denies each and every allegation contained
4 therein.

5 58. In response to Paragraph 66, UAD denies each and every allegation contained
6 therein.

7 59. In response to Paragraph 67, UAD denies each and every allegation contained
8 therein.

9 60. In response to Paragraph 69, UAD denies each and every allegation contained
10 therein.

11 61. In response to Paragraph 70, UAD denies each and every allegation contained
12 therein.

13 62. In response to Paragraph 71, UAD denies each and every allegation contained
14 therein.

15 63. In response to Paragraph 72, UAD denies each and every allegation contained
16 therein.

17 64. In response to Paragraph 73, UAD denies each and every allegation contained
18 therein.

19 65. In response to Paragraph 74, UAD denies each and every allegation contained
20 therein.

21 66. In response to Paragraph 75, UAD denies each and every allegation contained
22 therein.

23 67. In response to Paragraph 76, UAD has insufficient information and belief as
24 to the accuracy of statements contained therein, and on such basis denies each and every
25 allegation contained therein.

26 68. In response to Paragraph 77, UAD has insufficient information and belief as
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1 to the accuracy of statements contained therein, and on such basis denies each and every
2 allegation contained therein.

3 69. In response to Paragraph 78, UAD denies each and every allegation contained
4 therein.

5 70. In response to Paragraph 79, UAD denies each and every allegation contained
6 therein.

7 71. In response to Paragraph 80, UAD denies each and every allegation contained
8 therein.

9 72. In response to Paragraph 81, UAD has insufficient information and belief as
10 to the accuracy of statements about plaintiffs' discoveries, and on such basis denies each
11 and every allegation contained therein.

12 73. In further response to Paragraph 81, UAD denies that the document referred
13 to as Exhibit "E" was addressed to or received by UAD, and on such basis denies each and
14 every allegation contained therein.

15 74. In response to Paragraph 82, UAD denies each and every allegation contained
16 therein.

17 75. In response to Paragraph 83, UAD has insufficient information and belief as
18 to what appeared reasonable to plaintiffs and on such basis denies each and every
19 allegation contained in Paragraph 83.

20 76. In response to Paragraph 84, UAD admits that the notices referenced in
21 Exhibits "A" and "B" were mailed by certified mail by plaintiffs, but except as expressly
22 admitted, denies each and every other allegation contained in Paragraph 84.

23 77. In response to Paragraph 85, UAD has insufficient information and
24 knowledge to form a belief as to the accuracy of the allegations contained therein because
25 UAD does not know what plaintiffs refer to as "related acts and omissions" and on such
26 basis denies each and every allegation contained therein.

1 78. In response to Paragraph 86, UAD denies each and every allegation contained
2 therein.

3 79. In response to Paragraph 88, UAD denies each and every allegation contained
4 therein.

5 80. In response to Paragraph 89, UAD denies each and every allegation contained
6 therein.

7 81. In response to Paragraph 91, UAD denies each and every allegation contained
8 therein.

9 82. In response to Paragraph 92, UAD denies each and every allegation contained
10 therein.

11 83. In response to Paragraph 94, UAD denies each and every allegation contained
12 therein.

13 84. In response to Paragraph 95, UAD denies each and every allegation contained
14 therein.

15 85. In response to Paragraph 96, UAD denies each and every allegation contained
16 therein.

17 86. In response to Paragraph 98, UAD denies each and every allegation contained
18 therein.

19 87. In response to Paragraph 99, UAD admits that the parties have duties to each
20 other, but except as expressly admitted herein, UAD denies each and every other allegation
21 contained in Paragraph 99.

22 88. In response to Paragraph 100, UAD denies each and every allegation
23 contained therein.

24 89. In response to Paragraph 101, UAD denies each and every allegation
25 contained therein.

26 90. In response to Paragraph 102, UAD has insufficient knowledge or

1 information to respond to paragraph 102, and on such basis denies each and every
2 allegation contained in Paragraph 102.

3 91. In response to Paragraph 103, UAD denies each and every allegation
4 contained therein.

5 92. In response to Paragraph 104, UAD denies each and every allegation
6 contained therein.

7 8 AFFIRMATIVE DEFENSES

9 93. As and for a first affirmative defense, UAD alleges that plaintiffs fail to state
10 a claim upon which relief can be granted.

11 94. As and for a second affirmative defense, UAD alleges that plaintiffs lack
12 standing to litigate the claims and counts they assert.

13 95. As and for a third affirmative defense, UAD alleges that plaintiffs' claims are
14 barred, in whole or in part, because plaintiffs have not provided adequate notice and did
15 not comply with 33 U.S.C. § 1365(b) or 42 U.S.C. § 6972(b) or both.

16 96. As and for a fourth affirmative defense, UAD alleges that plaintiffs' claims
17 are barred, in whole or in part, because this court lacks subject matter jurisdiction over this
18 dispute because there are no ongoing violations on property owned or controlled by this
19 answering defendant.

20 97. As and for a fifth affirmative defense, UAD alleges that plaintiffs' claims are
21 barred, in whole or in part, by the applicable statute of limitations, including but not
22 limited to 28 U.S.C. § 6462.

23 98. As and for a sixth affirmative defense, UAD alleges that UAD should be
24 absolved of any and all liability because UAD is in compliance with all requirements
25 imposed by the North Coast Regional Water Quality Control Board, and because
26 investigation and cleanup of the property is under the oversite of the North Coast Regional
27 Water Quality Control Board.

1 99. As and for a seventh affirmative defense, UAD alleges that UAD should be
2 absolved of any and all liability because UAD is in compliance with all requirements
3 imposed by the North Coast Regional Water Quality Control Board and because the Court
4 should defer to the regulation and oversite of the property by the North Coast Regional
5 Water Quality Control Board.

6 100. As and for an eighth affirmative defense, UAD alleges that plaintiffs' claims
7 are barred by the doctrine of *laches*.

8 101. As and for a ninth affirmative defense, UAD alleges that plaintiffs' claims are
9 barred by the doctrine of unclean hands.

10 102. As and for a tenth affirmative defense, UAD alleges that UAD was not the
11 cause in fact of any threatened or actual releases of hazardous substances or hazardous
12 wastes as alleged by plaintiffs.

13 103. As and for an eleventh affirmative defense, UAD alleges that at the time of
14 the incident alleged in plaintiffs' complaint, plaintiffs failed to exercise reasonable and
15 ordinary care for their own safety, such as the injuries and damages allegedly sustained by
16 plaintiffs were proximately caused or contributed to by plaintiffs' own negligence. More
17 specifically, plaintiffs failed to maintain their property free of pollution, hazardous
18 substances, or hazardous wastes.

19 104. As and for a twelfth affirmative defense, UAD alleges that plaintiffs are not
20 entitled to the relief requested in the complaint because such relief would work a
21 substantial hardship on the defendant relative to the benefit plaintiffs would gain by the
22 relief requested.

23 105. As and for a thirteenth affirmative defense, UAD alleges that plaintiffs failed
24 to mitigate their damages.

25 106. As and for a fourteenth affirmative defense, UAD alleges that the injuries
26 asserted by plaintiffs occurred by reason of an upset [force majeure], specifically, a major

1 storm occurring on the evening of December 31, 2005 - January 1, 2006.
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3 107. As and for a fifteenth affirmative defense, UAD alleges that plaintiffs have
 4 failed to assist and aid defendant to minimize and prevent continuation of the alleged
 5 violations at the time of the alleged investigations by plaintiffs by failing to advise UAD,
 6 its agents, employees, officers, representatives, or any person, of the alleged violations and
 7 by asserting this matter defendant does not admit any violations, and to contrary denies
 8 any and all allegations of any violations.

9 108. UAD asserts all applicable defenses pled by any other defendant to this action
 10 and incorporates them by this reference.

11 109. UAD reserves the right to offer additional defenses, including defenses that
 12 cannot now be identified because plaintiffs have not sufficiently described their claims or
 13 because UAD lacks sufficient knowledge and information.

14 RELIEF REQUESTED

15 Defendant UAD respectfully prays for judgment herein as follows:

16 1. That plaintiffs' request for relief be denied;
 17 2. That this case be dismissed with prejudice;
 18 3. That UAD be awarded its costs of suit incurred herein;
 19 4. That UAD be awarded its reasonable attorney's fees and expert fees in
 20 defending this suit; and
 21 5. That UAD be awarded such other and further relief as the Court considers
 22 just and appropriate under all the circumstances of this case.

23 DATED: December 31, 2007

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 25 CHRISTOPHER J. NEARY
 26 Attorney for Defendant
 27 U.S. ALCHEMY CORPORATION dba
 28 UKIAH AUTO DISMANTLERS